

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15851 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

IQBAL ALIAS IKU S/O. KARIMBHAICHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 15851 of 2003
MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
MS PAURAMI SHETH Ld. AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 05/02/2004

ORAL JUDGEMENT

1. Heard Ms.D.R.Kachhavah, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondents.

2. By this petition under Article 226 of the

Constitution of India, the petitioner has been praying for quashing and setting aside of the detention order dated 3.7.2003 issued by respondent no.1 and a direction to the respondents to set the petitioner-detenu at liberty forthwith.

3. It is suggested from Annexure-B that for the purpose of passing the detention order (Annexure-A), the Detaining Authority took into consideration 3 cases filed against the petitioner and his associates for the offences under Sections 454, 457, 380 and 114 of the Indian Penal Code. It is stated that all these cases are pending investigation on the date of the passing of the impugned detention order.

4. Besides the 3 cases registered, the statements of two witnesses have been recorded by the Detaining Authority in connection with unregistered cases and considering the material on record, the impugned detention order came to be passed. It has been stated by Ms.Kachhavah, learned advocate for the petitioner that a co-detenu - Ganshyam alias Kaliyo S/o Hiralal Tank has been set at liberty by quashing and setting aside the detention order passed against him in Special Civil Application No.12733 of 2003 dated 20.11.2003 by the learned Single Judge of this Court. Copy of the order passed in Special Civil Application No.12733 of 2003 is produced on record.

5. Perusal of the grounds (Annexure-B) suggests that the same are against the present petitioner, whereas there is reference to his associates in the grounds of detention. That in the statement of witness no.1 dated 28.6.2003, it is stated that the present petitioner along with his associate Ganshyam alias Kaliyo S/o Hiralal Tank (petitioner in SCA No.12733 of 2003) have been indulging in the acts referred to in the said statement. Witness no.2 whose statement has been recorded on 28.6.2003 also refers to present petitioner as well as his associate i.e. the petitioner of the Special Civil Application No.12733 of 2003. Thus, it will be seen that on the same set of facts and on the same grounds, the associate of the present petitioner Ganshyam alias Kaliyo S/o Hiralal Tank has been set at liberty by setting aside the detention order passed against him. On the same ground the present petitioner is also detained by the impugned detention order.

6. Since the detention order passed against the associate of the present petitioner which was on the same ground has been set aside by this Court, for the reason

of parity, the impugned detention order passed against the present petitioner is also required to be set aside and the petitioner is required to be set at liberty.

7. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 3.7.2003 (Annexure-A) passed by respondent no.1 against the petitioner-detenu -Iqbal alias Iku S/o Karimbhai Chauhan is hereby quashed and set aside. The petitioner -detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi, J.)

(vipul)